UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Charles Wolff, Plaintiff, v. New Hampshire Department of Corrections, Defendants.	Civil No. 06-321-PB

DEFENDANTS' RESPONSE TO MAGISTRATE JUDGE'S PRELIMINARY ORDER

On August 2, 2007 the Court (Muirhead, J.) issued a preliminary order, taking under advisement Plaintiff's Motion for Preliminary Injunction. In its order the Court directed the Defendants to provide a written response in which the State was to advise the Court of:

(i) What actions the prison and its employees intend to take to evaluate Wolff's present medical condition in light of his intolerance for and reactions to the food he is presently being served; and

(ii) How, specifically, the prison and its employees plan to remedy Wolff's situation if it is discovered by the medical personnel that Wolff is not able to tolerate the food presently being provided or offered to him, or that the food does not adequately meet Wolff's particular nutritional needs in light of his medical conditions and religious belief.

A. Response to Question One

Undersigned counsel has met with staff from the medical department at the prison, who informed counsel that the following steps have been taken to evaluate Mr. Wolff's medical condition, and to ascertain whether Mr. Wolff is actually intolerant to the food being provided to him.

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First, Mr. Wolff was admitted to the infirmary at the Men's Prison on August 7, 2007 where he was housed in an isolation unit. The purpose of this was so that staff could closely monitor Mr. Wolff's dietary intake in a controlled environment, and monitor his reactions to his diet. Mr. Wolff was kept in the isolation unit for one week (discharged August 14, 2007). During that week, staff closely monitored his intake of food and fluids, as well as his outputs. His weight and vital signs were closely monitored. He was provided with the normal kosher diet, including the shelf-stabilized packages that he claims cause him digestive problems. Nursing staff examined his stools throughout the entire week, and despite Mr. Wolff's complaints about diarrhea, found *no* evidence that Mr. Wolff was suffering from diarrhea. Attached to this response as Exhibit A are copies of the relevant nursing notes, together with the daily food tracking sheets which contain information about his daily bowel functioning. A review of those documents demonstrates conclusively that the kosher foods being provided to Mr. Wolff are *not* causing him any gastric distress.

During Mr. Wolff's admittance to the infirmary, medical staff ordered a full blood workup, and a complete metabolic panel. The results of those tests showed that Mr. Wolff's lab results are all within the normal range. In particular, they demonstrate that his cholesterol and diabetes are being well-managed.

In addition, medical staff has ordered Mr. Wolff to be sent out for a consultation with a nutritionist. That appointment is currently scheduled for August 31, 2007. The nutritionist is being asked to consider, among other things, how many eggs Mr. Wolff should be eating per week given his history of high cholesterol, and whether he can substitute just eating the boiled egg whites for the entire egg.

B. Answer to Question Two

At this point, there is absolutely no evidence that the diet being provided to Mr. Wolff does not adequately meet his nutritional needs. However, counsel has been personally assured by the prison's medical director, Dr. Robert McLeod, that the prison will take whatever steps are necessary to ensure that Mr. Wolff is provided with a diet that is both kosher, and which satisfies his nutritional and medical needs. More specifically, Dr. McLeod has advised counsel that if there is objective evidence that Mr. Wolff cannot physically tolerate the kosher diet being provided, that an alternative kosher diet must be provided. Moreover, if the nutritionist were to conclude that Mr. Wolff should not be allowed to eat any eggs (because of his health history), then some alternative kosher breakfast foods would be substituted for Mr. Wolff. At this point, however, there is no evidence that Mr. Wolff's complaints about the kosher diet are more than the expression of an individual taste preference.

Respectfully submitted,

NEW HAMPSHIRE STATE PRISON,

By and through its counsel,

KELLY A. AYOTTE,
Attorney General

\s\ Andrew B. Livernois
Andrew B. Livernois (#14350)
Assistant Attorney General
33 Capitol Street
Concord, NH 03301
603-271-3650

Certificate of Service

August 27, 2007

I hereby certify that a copy of the foregoing was mailed this date to Charles Wolff at the New Hampshire State Prison.

\s\ Andrew B. Livernois
Andrew B. Livernois